

NATIONAL INDIAN GAMING COMMISSION
PROPOSED GAMING ORDINANCE REQUIREMENTS RELATING TO
FACILITY LICENSING

3/21/07

The intent of the proposed amendments to the tribal gaming ordinance regulations is to provide a method of identifying the Indian lands on which tribes are gaming or intend to game and to ensure that environmental and public health and safety standards are adopted and implemented by tribes. If adopted, the regulation would require the following provisions. All new gaming ordinances will be subject to these new requirements and all previously NIGC approved gaming ordinances must be amended within two (2) years of the promulgation of the revised regulations to incorporate the new requirements. Before a new gaming facility opens, a tribe will be required to submit to the Chairman a notice that it is considering issuing a new facility license and certain Indian lands information. Further, facility licenses must be renewed at least once every three (3) years. With each facility license renewal, a tribe will certify that it has adopted or identified environmental and public health and safety laws applicable to its gaming operation(s), it is in compliance with those laws, and that it is ensuring that it adequately protects the environment and public health and safety. Concurrent with the facility license certification, a tribe will submit a list identifying the laws, resolutions, and policies or procedures adopted by the tribe in certain environmental and public health and safety areas unless the list has not substantially changed since the last submission.

25 CFR Part 522 Submission of Gaming Ordinance or Resolution

522.1 SCOPE OF THIS PART.

This part applies to any gaming ordinance or resolution adopted by a tribe after ~~after~~ [insert Effective Date of regulations]. ~~February 22, 1993. Part 523 of this chapter applies to all existing gaming ordinances or resolutions.~~

522.2 SUBMISSION REQUIREMENTS.

~~(1)~~ A tribe shall submit to the Chairman all of the following information with a request for approval of a class II or class III ordinance or resolution:

(a) One copy on 8 1/2" x 11" paper of an ordinance or resolution certified as authentic by an authorized tribal official and that meets the approval requirements in §522.4(b) or 522.6 of this part;

(b) A description of procedures to conduct or cause to be conducted background investigations on key employees and primary management officials and to ensure that key employees and primary management officials are notified of their rights under the Privacy Act as specified in §556.2 of this chapter;

- (c) A description of procedures to issue tribal licenses to primary management officials and key employees;
- (d) Copies of all tribal gaming regulations;
- (e) When an ordinance or resolution concerns class III gaming, a copy of the tribal-state compact or procedures as prescribed by the Secretary;
- (f) A description of procedures for resolving disputes between the gaming public and the tribe or the management contractor;
- (g) Designation of an agent for service under §519.1 of this chapter; and
- (h) Identification of a law enforcement agency that will take fingerprints and a description of procedures for conducting a criminal history check by a law enforcement agency. Such a criminal history check shall include a check of criminal history records information maintained by the Federal Bureau of Investigation.

(2) Unless requested by the Chairman, a tribe is not required to submit information regarding the Indian lands status of gaming places, facilities, or locations that were open on [insert effective date of regulations].

(3) A tribe shall provide any additional environmental and public health and safety documentation and Indian lands documentation that the Chairman may in his or her discretion request as needed.

522.3 AMENDMENT.

- (a) Within 15 days after adoption, a tribe shall submit for the Chairman's approval any amendment to an ordinance or resolution.
- (b) A tribe shall submit for the Chairman's approval any amendment to the submissions made under §§522.2(b) through (h) of this part within 15 days after adoption of such amendment.

522.4 APPROVAL REQUIREMENTS FOR CLASS II ORDINANCES.

No later than 90 days after the submission to the Chairman under §522.2 of this part, the Chairman shall approve the class II ordinance or resolution if the Chairman finds that --

- (a) A tribe meets the submission requirements contained in §522.2 of this part; and
- (b) The class II ordinance or resolution provides that --

(1) The tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation unless it elects to allow individually owned gaming under either §522.10 or §522.11 of this part;

(2) A tribe shall use net revenues from any tribal gaming or from any individually owned games only for one or more of the following purposes:

(i) To fund tribal government operations or programs;

(ii) To provide for the general welfare of the tribe and its members (if a tribe elects to make per capita distributions, the plan must be approved by the Secretary of the Interior under 25 U.S.C. 2710(b)(3));

(iii) To promote tribal economic development;

(iv) To donate to charitable organizations; or

(v) To help fund operations of local government agencies;

(3) A tribe shall cause to be conducted independent audits of gaming operations annually and shall submit the results of those audits to the Commission;

(4) All gaming related contracts that result in purchases of supplies, services, or concessions for more than \$25,000 in any year (except contracts for professional legal or accounting services) shall be specifically included within the scope of the audit conducted under paragraph (b)(3) of this section;

(5) A tribe shall perform background investigations and issue licenses for key employees and primary management officials according to requirements that are at least as stringent as those in parts 556 and 558 of this chapter;

~~(6) A tribe shall issue a separate license to each place, facility, or location on Indian lands where a tribe elects to allow class II gaming; and~~

~~(6) (a) At least once every 3 years, a tribe shall issue a separate facility license to each existing place, facility or location on Indian lands where a tribe elects to allow gaming.~~

~~(b) A tribe shall submit a copy of all facility licenses to the Chairman within 30 days of issuance.~~

~~(c) A tribe shall notify the Chairman within 30 days if a facility license is terminated or not renewed, or if a gaming place, facility, or location closes.~~

~~(d) At least 120 days before opening any new place, facility, or location on Indian lands where class II gaming will occur, a tribe shall submit to the Chairman a notice that a facility license is under consideration for issuance, unless the new gaming~~

place, facility, or location will be on land acquired into trust by the United States for the benefit of the tribe before October 17, 1988, in which case a tribe shall submit to the Chairman a notice that a facility license is under consideration for issuance at least 60 days before opening.

(e) A tribe shall submit to the Chairman the following with the notice that a facility license is under consideration for issuance to any new gaming place, facility, or location:

(1) a certification that the gaming place, facility, or location will be on Indian lands eligible for gaming pursuant to the Indian Gaming Regulatory Act, accompanied by:

- (i) the name and address of the place, facility, or location;
- (ii) a legal description of the place, facility, or location;
- (iii) an 8 by 10 inch road map or plat map of the area indicating the gaming site, or an electronic .pdf file of the road or plat map;
- (iv) a copy of the trust or other deed(s) for the property if one exists, or an explanation as to why such documentation does not exist;
- (v) copies of any court decisions, settlement agreements, Congressional acts, Executive Orders, or Secretarial proclamations or decisions affecting title or ownership of the land; and
- (vi) if the gaming place, facility, or location is within the boundaries of the tribe's reservation as of October 17, 1988, documentation of the reservation's boundaries.

(2) if the gaming place, facility, or location is located on trust land or restricted fee land outside of the tribe's reservation and acquired after October 17, 1988, the certification must also be accompanied by:

- (i) a documented explanation of the tribe's jurisdiction over, and exercise of governmental authority over, the gaming site;
- (ii) documentation of ownership of the site; and
- (iii) documentation of any tribal leasehold interest in the property, including any approvals of the lease agreement by the Secretary.

(3) A tribe may submit any of the following in place of the supporting documentation listed in (e)(1):

- (i) a copy of an Indian lands opinion from the Commission or the Department of the Interior finding that the gaming site is Indian lands on which gaming may be lawfully conducted under the Indian Gaming Regulatory Act; or
- (ii) a copy of a final order from a federal court finding that the gaming site is Indian lands on which gaming may be lawfully conducted under the Indian Gaming Regulatory Act; or

(iii) a copy of a tribal-state compact, approved by the Secretary of the Interior, with a legal description a specific site where gaming will occur;

or

(iv) a copy of a management contract, approved by the Chairman, for the operation of a tribal gaming facility which provides a legal description or other specific site information regarding where gaming will occur; or

(v) a copy of a tribal gaming ordinance, approved by the Chairman, which provides a legal description or other specific site information regarding where gaming will occur.

~~(7) A tribe shall construct, maintain and operate a gaming facility in a manner that adequately protects the environment and the public health and safety.~~

(7) A tribe shall construct, maintain and operate a gaming facility in a manner that adequately protects the environment and the public health and safety.

(a) A tribe shall submit to the Chairman with each facility license a certification attesting that, by issuing the facility license:

(1) the tribe has adopted or identified environmental and public health and safety laws applicable to its gaming operation; and

(2) the tribe is in compliance with those laws; and

(3) the tribe has ensured and is ensuring that the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety.

(b) The environmental and public health and safety certification shall be accompanied by:

(1) A list identifying the laws, resolutions, and policies and procedures adopted by the tribe, including those adopted in a tribal-state compact, to protect the environment and public health and safety in the following areas:

(i) emergency preparedness;

(ii) fire suppression;

(iii) food and potable water;

(iv) construction and maintenance;

(v) hazardous materials;

(vi) sanitation (both solid waste and wastewater);

(vii) law enforcement and security; and

(viii) other environmental or public health and safety standards adopted by the tribe in light of local climate, geography, and other local conditions and applicable to its gaming facilities, places or locations.

(2) Upon reissuing a license to an existing gaming place, facility, or location, and in lieu of complying with paragraph (b)(1), a tribe may certify to the Chairman that it has not substantially modified its laws protecting the environment and public health and safety.

522.5 DISAPPROVAL OF A CLASS II ORDINANCE.

No later than 90 days after a tribe submits an ordinance for approval under §522.2 of this part, the Chairman may disapprove an ordinance if he or she determines that a tribe failed to comply with the requirements of §522.2 or §522.4(b) of this part. The Chairman shall notify a tribe of its right to appeal under part 524 of this chapter. A disapproval shall be effective immediately unless appealed under part 524 of this chapter.

522.6 APPROVAL REQUIREMENTS FOR CLASS III ORDINANCES.

No later than 90 days after the submission to the Chairman under §522.2 of this part, the Chairman shall approve the class III ordinance or resolution if --

- (a) A tribe follows the submission requirements contained in §522.2 of this part;
- (b) The ordinance or resolution meets the requirements contained in §522.4(b) (2), (3), (4), (5), (6), and (7) of this part; and
- (c) The tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation unless it elects to allow individually owned gaming under §522.10 of this part.

522.7 DISAPPROVAL OF A CLASS III ORDINANCE.

(a) Notwithstanding compliance with the requirements of §522.6 of this part and no later than 90 days after a submission under §522.2 of this part, the Chairman shall disapprove an ordinance or resolution and notify a tribe of its right of appeal under part 524 of this chapter if the Chairman determines that --

- (1) A tribal governing body did not adopt the ordinance or resolution in compliance with the governing documents of a tribe; or
- (2) A tribal governing body was significantly and unduly influenced in the adoption of the ordinance or resolution by a person having a direct or indirect financial interest in a management contract, a person having management responsibility for a management contract, or their agents.

(b) A disapproval shall be effective immediately unless appealed under part 524 of this chapter.

522.8 PUBLICATION OF CLASS III ORDINANCE AND APPROVAL.

The Chairman shall publish a class III tribal gaming ordinance or resolution ~~in the FEDERAL REGISTER~~ along with the Chairman's approval thereof.

522.9 SUBSTITUTE APPROVAL.

If the Chairman fails to approve or disapprove an ordinance or resolution submitted under §522.2 of this part within 90 days after the date of submission to the Chairman, a tribal ordinance or resolution shall be considered to have been approved by the Chairman but only to the extent that such ordinance or resolution is consistent with the provisions of the Act and this chapter.

522.10 INDIVIDUALLY OWNED CLASS II AND CLASS III GAMING OPERATIONS OTHER THAN THOSE OPERATING ON SEPTEMBER 1, 1986.

For licensing of individually owned gaming operations other than those operating on September 1, 1986 (addressed under §522.11 of this part), a tribal ordinance shall require:

- (a) That the gaming operation be licensed and regulated under an ordinance or resolution approved by the Chairman;
- (b) That income to the tribe from an individually owned gaming operation be used only for the purposes listed in §522.4(b)(2) of this part;
- (c) That not less than 60 percent of the net revenues be income to the Tribe;
- (d) That the owner pay an assessment to the Commission under §514.1 of this chapter;
- (e) Licensing standards that are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the surrounding State; and
- (f) Denial of a license for any person or entity that would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the surrounding State. State law standards shall apply with respect to purpose, entity, pot limits and hours of operation.

522.11 INDIVIDUALLY OWNED CLASS II GAMING OPERATIONS OPERATING ON SEPTEMBER 1, 1986.

For licensing of individually owned gaming operations operating on September 1, 1986, under §502.3(e) of this chapter, a tribal ordinance shall contain the same requirements as those in §522.10(a)-(d) of this part.

522.12 REVOCATION OF CLASS III GAMING.

A governing body of a tribe, in its sole discretion and without the approval of the Chairman, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorizes class III gaming.

(a) A tribe shall submit to the Chairman on 8 1/2" x 11" paper one copy of any revocation ordinance or resolution certified as authentic by an authorized tribal official.

(b) The Chairman shall publish such ordinance or resolution in the FEDERAL REGISTER and the revocation provided by such ordinance or resolution shall take effect on the date of such publication.

(c) Notwithstanding any other provision of this section, any person or entity operating a class III gaming operation on the date of publication in the FEDERAL REGISTER under paragraph (b) of this section may, during a one-year period beginning on the date of publication, continue to operate such operation in conformance with a tribal-state compact.

(d) A revocation shall not affect --

(1) Any civil action that arises during the one-year period following publication of the revocation; or

(2) Any crime that is committed during the one-year period following publication of the revocation.

522.13 TIME LIMIT FOR AMENDMENT OF GAMING ORDINANCES TO
CONFORM WITH CHANGES TO SECTION 522.4

By [insert date that is 2 years after effective date], all tribes shall amend their gaming ordinances to incorporate sections 522.4(6) and 522.4(7) and submit the amended ordinances to the Chairman for approval under this part.

25 CFR Part 502 Definitions of this Chapter

Add a new 502.7

502.7 Construction And Maintenance Of The Gaming Facility. And The Operation Of That Gaming Is Conducted In A Manner Which Adequately Protects The Environment And The Public Health And Safety means a tribe has adopted or identified laws, resolutions, policies and procedures applicable to each gaming place, facility or location that protect the environment and the public health and safety, including standards negotiated under a tribal-state compact, and enforces such laws, resolutions, policies and procedures. Laws, resolutions, policies and procedures in this area shall cover, at a minimum:

- (a) emergency preparedness;
- (b) fire suppression;
- (c) food and potable water;
- (d) construction and maintenance;
- (e) hazardous and other materials;
- (f) sanitation (both solid waste and wastewater);
- (g) law enforcement and security; and
- (h) other environmental or public health and safety standards adopted by the tribe in light of local climate, geography, and other local conditions and applicable to its gaming operations.

Renumber 502.7 and 502.8

Add a new 502.10

502.10 Facility License means a separate license issued by a tribe to each place, facility, or location on Indian lands where the tribe elects to allow class II or III gaming.

Renumber 502.10 through 502.21

Delete 25 C.F.R. part 523

25 CFR Part 523 Review and Approval Of Existing Ordinances or Resolutions

523.1 SCOPE OF THIS PART.

This part applies to a class II or a class III gaming ordinance or resolution enacted by a tribe prior to February 22, 1993, and that has not been submitted to the Chairman.

523.2 SUBMISSION REQUIREMENTS.

- (a) Within 60 days after a request by the Chairman, a tribe shall:
 - (1) Submit for review and approval all items required under §522.2 of this chapter; and
 - (2) For each gaming operation submit the financial statements for the previous fiscal year and the most recent audit report and management letter.

~~(b) If a tribe fails to submit all items under §522.2 of this chapter within 60 days, the Chairman shall deem the ordinance or resolution disapproved and shall notify the tribe of its right to appeal under part 524.~~

~~**523.3 REVIEW OF AN ORDINANCE OR RESOLUTION.**~~

~~Within 90 days after receipt of a submission under §523.2 of this part, the Chairman shall subject the ordinance or resolution to the standards in part 522 of this chapter.~~

~~(a) For class II and class III gaming, if the Chairman determines that an ordinance or resolution submitted under this part meets the approval and submission requirements of part 522 of this chapter and the Chairman finds the annual financial statements are included in the submission, the Chairman shall approve the ordinance or resolution.~~

~~(b) If an ordinance or resolution fails to meet the requirements for review under part 522 of this chapter or if a tribe fails to submit the annual financial statement, the Chairman shall notify a tribe in writing of the specific areas of noncompliance.~~

~~(c) The Chairman shall allow a tribe 120 days from receipt of such notice to bring the ordinance or resolution into compliance with the requirements of part 522 of this chapter or to submit an annual financial statement, or both.~~

~~(d) At the end of the 120-day period provided under paragraph (c) of this section, or earlier if the tribe notifies the Chairman that it intends not to comply, the Chairman shall disapprove any ordinance or resolution if a tribe fails to amend according to the notification made under paragraph (b) of this section.~~

~~**523.4 REVIEW OF AN AMENDMENT.**~~

~~Within 90 days after receipt of an amendment, the Chairman shall subject the amendment to the standards in part 522 of this chapter.~~

~~(a) If the Chairman determines that an amendment meets the approval and submission requirements of part 522 of this chapter, the Chairman will approve the amendment.~~

~~(b) If an amendment fails to meet the requirements for review under part 522 of this chapter, the Chairman shall notify the tribe in writing of the specific areas of noncompliance.~~

~~(c) If the Chairman fails to disapprove a submission under paragraph (a) or (b) of this section within 90 days after the date of submission to the Chairman, a tribal amendment shall be considered to have been approved by the Chairman but only to the extent that such amendment is consistent with the provisions of the Act and this chapter.~~